No. 49324-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Charles and Carol Parsons,

Respondents,

v.

John Paul Mierz,

Appellant.

Appeal from the Superior Court for Pierce County
The Honorable Philip K. Sorenson

Brief of Respondent

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INTRODUCTION

The respondents, Charles and Carol Parsons request that this Court affirm the Pierce County Superior Court's Findings of Fact and Conclusions of Law, entered on July 29, 2017, granting the Parsons an award of reasonable attorney's fees under Washington's Residential Landlord Tenant Act ("RLTA").

Charles and Carol Parsons attempted to evict John Paul Mierz from Space 9 at Harts Lake, their RV park in Roy, in April 2016. Mr. Mierz resisted the eviction and forced them to file an unlawful detainer action in Pierce County Superior Court. The Parsons prevailed at trial and the court issued a writ of restitution and awarded them their attorney's fees under the RLTA.

Mr. Mierz now appeals the award of attorney's fees arguing that the RLTA cannot apply in this situation. He argues that the act cannot apply because he is not a tenant and his RV, which he located on the space he rented from the Parsons at Harts Lake, was not a dwelling unit under the act. These arguments are easily dismissed because the RLTA clearly applies to situations in which the landlord owns the dwelling unit "or the property of which it is a part." Moreover, if Mr. Mierz's argument is accepted, residence of RV parks will have none of the protections of the RLTA and will be left with only

the minimal protections provided in the Unlawful Detainer Act. Fortunately, the RLTA does apply to Mr. Mierz's eviction and this Court should affirm the trial court's award of attorney's fees.

RESPONSE TO ASSIGNMENT OF ERROR

1. The trial court properly awarded the Parsons their attorney's fees. Additionally, the trial court's findings of fact and conclusions of law are not in error.

ISSUES RELATED TO RESPONSE TO ASSIGNMENT OF ERROR

1. The trial court did not err in awarding the Parsons their attorney's fees under the RLTA because the act explicitly contemplates situations in which the landlord owns the property on which the dwelling unit, such as an RV, rests and applies to "sleeping spaces."
2. The RLTA provides reasonable attorney's fees and costs to a prevailing party in an unlawful detainer action. Mr. Mierz's eviction is subject to the RLTA. Therefore, if this Court affirms the trial court's award of attorney's fees, the Parsons should be awarded their reasonable attorney's fees and costs responding to Mr. Mierz's appeal, too.

STATEMENT OF THE CASE

This matter arises out of the Parsons' eviction of the appellant, John Paul Mierz, and his RV, from the lot which he rented from the Parsons at the Harts Lake Resort, an RV park located in Roy. (CP 17–18.) Mr. Mierz rented Space 9 at Harts Lake under a month-to-month tenancy and parked his RV in that spot. (CP 17–18.) The Parsons properly terminated Mr. Mierz's tenancy on April 30, 2016, but Mr. Mierz refused to vacate, forcing the Parsons to file an unlawful detainer action. (CP 19.)

In support of his refusal to vacate, Mr. Mierz argued that Washington's Mobile Home Landlord-Tenant Act ("MHLTA") applied to his tenancy and, therefore, his tenancy could not be terminated under the provisions of the RLTA. (CP 19.) The Parsons moved for an Order directing him to show cause why the court should not enter an order of restitution compelling him to vacate Space 9. (CP 19.) At the hearing, the commissioner declined to enter a writ of restitution and set the matter for trial.

At trial, the Parsons argued that the RLTA applied to Mr. Mierz's tenancy because Harts Lake is an RV park, not a mobile home park, and Mr. Mierz's RV is not a permanent or semi-permanent "park model" RV, and, therefore, the MHLTA had no application to the eviction. (*See* CP 19.) Mr. Mierz argued that Harts Lake was a mobile home park, his RV was a semi-permanent structure; therefore, the 20-day eviction notice given to him by the Parsons

had been invalid because they had been obligated to comply with the more restrictive procedures in the MHLTA. (*See* CP 19.) After the trial, the court ruled that the RLTA, not the MHLTA, applied to Mr. Mierz's eviction, entered an Order of Restitution compelling Mr. Mierz to vacate Harts Lake, and awarded the Parsons' their reasonable attorney's fees under the RLTA. (CP 20–21.)

The court set an additional hearing on the issue of attorney's fees. For this hearing, Mr. Mierz reversed his argument, arguing that his RV's impermanence precluded the application of the RLTA; therefore, the Parsons were not entitled to an award of attorney's fees. (CP 9–11.) The court disagreed, finding that the RLTA applied to Mr. Mierz's eviction despite the ease with which he could move his RV from Space 9 and that the Parsons were entitled to an award of attorney's fees. (*See* CP 21.)

In this appeal, Mr. Mierz only seeks to overturn the court's award of attorney's fees under Washington's RLTA. His argument is primarily predicated on the basic theory—which he advanced after trial and which is contrary to his position at trial—that the provisions of the RLTA are inapplicable to his situation because his RV is not a dwelling unit permanently attached to Space 9, and because the Parsons did not own the RV.. (Appellant's Brief, 7–9.)

STANDARD OF REVIEW

Attorney's fees are only recoverable "when authorized by statute, a recognized ground of equity, or agreement of the parties." *Wiley v. Rehak*, 143 Wn.2d 339, 348, 20 P.3d 404 (2001) (quoting *Perkins Coie v. Williams*, 84 Wn.App. 733, 742–43, 929 P.2d 1215 (1997)). Whether a statute authorizes an award of attorney's fees is a question of law reviewed de novo. *McGuire v. Bates*, 169 Wn.2d 185, 189, 234 P.3d 205 (2010).

Here, the only question presented to the Court is whether the RLTA applies to this case. Thus, the trial court's decision to award the Parsons their reasonable attorney's fees must be reviewed de novo by this Court.

ARGUMENT

A landlord who obtains a writ of restitution against a holdover tenant may be entitled to its reasonable attorney's fees and costs under Washington's RLTA. RCW 59.18.290(2), .410.. The only question raised by Mr. Mierz's appeal is whether the provisions of the RLTA apply to his rental and use of Space 9 at Harts Lake. If the RLTA applies, the trial court properly awarded the Parsons their attorney's fees. If the RLTA does not apply, then the trial court erred by awarding them attorney's fees. Mr. Mierzs argues that the RLTA does not apply to his eviction because he is not a tenant and the Par-

sons were not landlords under the Act. He also argues, without support, that the RLTA only applies when the landlord owns the dwelling unit. His definitional argument is easily disregarded because to make it he intentionally ignores half of the statute's definition of landlord. His argument that the RLTA only applies when the landlord owns the actual dwelling unit is also easily disregarded because it, too, is only supportable if you ignore half of the Act's definition of landlord. More importantly, there is no such requirement anywhere in the Act. In truth, the RLTA applies to all landlord-tenant relationships governed by a rental agreement which are not explicitly exempted from the Act's provisions, or to the MHLTA.

A. The RLTA applies to situations where the landlord owns the property on which a dwelling unit is located.

The RLTA applies to all landlord-tenant relationships governed by a rental agreement which are not governed by the MHLTA. *See* RCW 59.18.911. Under the RLTA, a landlord is "the owner, lessor, or sublessor of the dwelling unit *or the property of which it is a part.*" RCW 59.18.030(14) (emphasis added). Tenants are people entitled to live in dwelling units under a rental agreement. RCW 59.18.030(26). A dwelling unit is a structure, or part of a structure, "used as a home, residence, or sleeping place..., including but not limited to single-family residences and units of multiplexes, apartment buildings, and mobile homes." RCW 59.18.030(9). Thus,

the Act applies to landlord-tenant relationships involving a landlord's rental of dwelling units, *or the property of which it is a part*, to a tenant under a rental agreement. There is no requirement that the landlord own the dwelling unit if it leases or subleases the "the property of which [the dwelling unit] is a part."

B. The RLTA applies here because the Parsons owned Space 9, the property of which Mr. Mierz's RV was a part.

Here, the statutory definitions do not leave a real question as to whether Mr. Mierz's tenancy at Harts Lake is governed by the RLTA. The act applies to all landlord-tenant relationships governed by a rental agreement and Mr. Mierz does not contest that his occupancy of Space 9 was governed by a rental agreement. Space 9 may not have been Mr. Mierz's dwelling unit, but that does not matter because the Act applies to situations in which the landlord owns, leases, or subleases the dwelling unit or the property of which it is a part. RCW 59.18.030(14). The Parsons owned Space 9 and, per their rental agreement with Mr. Mierz, allowed him to connect his RV unit to it so that the RV, and the space on which it was semi-permanently placed, could serve as his home.

Lastly, there is no reason not to treat Space 9 as a dwelling unit because the Act's definition of dwelling unit explicitly includes "sleeping spaces." RCW 59.18.030(9). Thus, even if Mr. Mierz's RV is not a dwelling unit, Space 9 is a sleeping space on which Mr.

Mierz placed his RV pursuant to his rental agreement with the Parsons; therefore, the RLTA applies to his eviction.

C. Mr. Mierz's argument that the RLTA does not apply to his eviction requires ignoring the Act's full definitions.

In his appellate brief, Mr. Mierz argues that the RLTA does not apply to his eviction because under the Act he was not a tenant, Space 9 is not a dwelling unit, and the Parsons were not landlords. (Appellant's Brief, 7–9.) These arguments are based on his select reading of the statutory definitions, readings which, if accepted, would disharmonize the RLTA's provisions.

Mr. Mierz's argument that he is not a tenant under the Act, and therefore the Act does not apply, is based entirely on his contention that for him to be considered a tenant under the RLTA the Parsons had to own his RV. (Appellant's Brief, 7–8.) He explains that to be a tenant, "an individual must be entitled to occupy a dwelling unit—a structure or a part of a structure—as a residence under a rental agreement." (Appellant's Brief, 7.) He is not a tenant, he argues, because he is entitled "to occupy his recreational vehicle wherever and whenever he chooses." (Appellant's Brief, 7.) But that statement is demonstrably false—no one has the right to semi-permanently place their RV on Space 9 at Harts Lake in the absence of a rental agreement and no one would argue otherwise. Thus, Mr. Mierz simply does not have the right to occupy his RV "wherever and whenever he chooses."

More importantly, the Parsons did not have to own Mr. Mierz's dwelling unit because the RLTA explicitly applies to landlords who own, lease, or sublease "the dwelling unit *or the property of which it is a part*"; not the structure of which it is a part, the property of which it is a part. Reading a requirement into the RLTA that a landlord own the dwelling unit or the structure of which it is a part, impermissibly reads-out an actual clause of the Act. To do so is plainly contrary to Washington law because Washington courts read a statute's provision as a whole, "harmonizing its provisions by reading them in context with related provisions." *Henry Indus., Inc. v. Dep't of Labor & Indus.*, 195 Wn.App. 593, 622, 381 P.3d 172 (2016).

This same argument applies with equal force to Mr. Mierz's claim that the RLTA cannot apply because Space 9 is not a dwelling unit. As discussed, Space 9 does not have to be a dwelling unit because the Act also applies if the landlord owns, leases, or subleases the dwelling unit "or" the property of which it is a part. *See* RCW 59.18.030(14). The RLTA applies because the Parsons (landlord) own the property (Harts Lake) of which, through various semi-permanent connections, Mr. Mierz's RV was a part. In fact, the Parsons arguably owned "the dwelling unit" because, as discussed above, Space 9 may be considered a "dwelling unit" because dwelling units include "sleeping spaces." *See* RCW 59.18.030(9).

Lastly, Mr. Mierz's argument regarding construing the RLTA as a whole misses the point for two reasons. (*See* Appellant's Brief,

9–11.) First, there is no reason the list of protections included in the RLTA for more traditional residential tenants precludes its application to RV parks. Mr. Mierz cites no authority in support of this argument other than to vaguely state the uncontroversial position that statutes must be read as a whole and that their provisions must be harmonized. Also, Mr. Mierz takes the provision he cites out of context. For instance, the RLTA does not require that every landlord safeguard a master key. It simply states that a landlord must "[m]aintain and safeguard with reasonable care *any* master key or duplicate keys to the dwelling unit." RCW 59.18.060(7). The Legislature's use of "any" implies that the provision does not apply if there is no master key, such as would be the case for an RV park. Mr. Mierz's other examples are similarly deficient. Secondly, if accepted, Mr. Mierz's argument would strip residents of RV parks of any RLTA provisions which do apply. They would not have the protections of the MHLTA either. This is not a reasonable public policy result as there is no reason to infer, given the arguments laid out above, that the Legislature intended to exclude residents of RV parks from the protections of the RLTA and leave them only with the minimal protections of Washington's UDA.

D. The Parsons are entitled to attorney's fees on appeal.

The Parsons are entitled to an award of reasonable attorney's fees on appeal under the RLTA. RCW 59.18.290(2), .410. This status permits the court in an unlawful detainer to assess damages arising out of the tenancy, including for statutory costs and reasonable attorney's fees.

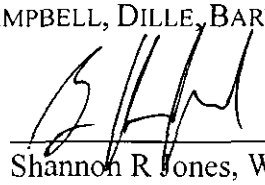
CONCLUSION

This Court should affirm the trial court's award of attorney's fees to the Parsons. They are landlords under the RLTA because they own the property of which Mr. Mierz's RV, at least during his tenancy, was a part. Mr. Mierz's right to occupy his RV at Harts Lake was predicated on his rental agreement with the Parsons. As such, the RLTA applies to this situation and the trial court properly awarded the Parsons their attorney's fees as the prevailing party in the underlying unlawful detainer action. Mr. Mierz's argument for overturning the trial court, on the other hand, is predicated on a reading of the RTLA which only makes sense if one wholly ignores the Act's definition of landlord. That definition shows that the act applies to situations in which the landlord does not own the actual dwelling unit, but the land on which, per a rental agreement, it rests. As such, there is no reason to overturn the trial court and enter a

ruling which would have the unintended effect of stripping residents of RV parks of the protections of the RLTA.

RESPECTFULLY SUBMITTED this 23rd day of March, 2017.

CAMPBELL, DILLE, BARNETT & SMITH, PLLC

By 

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DECLARATION OF SERVICE

I, **Michelle Lea**, hereby declare under penalty of perjury under the laws of the State of Washington that I am employed by **Campbell, Dille, Barnett & Smith, PLLC**, and that on today's date, March 23, 2017, I served in the manner indicated by directing delivery to the following individuals:

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